

# Exhibit 22

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc v. Abbott Laboratories, Inc.; Dey, Inc., et al.; Boehringer Ingelheim Corp., et al.;*  
Civil Action No. 01-12257-PBS

Exhibit to the September 22, 2009, Declaration of George B. Henderson, II  
In Support of Plaintiff's Response to Defendants' Combined Local Rule 56.1  
Statement of Additional Material Facts Pertinent to the United States' Motions  
for Partial Summary Judgment Against Defendants

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

-----X MDL NO. 1456

IN RE: PHARMACEUTICAL INDUSTRY : CIVIL ACTION:

AVERAGE WHOLESALE PRICE LITIGATION : 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO: :

U.S. ex rel. Ven-A-Care of the : CIVIL ACTION:

Florida Keys, Inc. v. Abbott : 06-CV-11337-PBS

Laboratories, Inc. :

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IN THE CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

-----X

STATE OF ALABAMA, : CASE NO.

Plaintiff, : CV-05-219

v. :

ABBOTT LABORATORIES, INC., : JUDGE

et al., : CHARLES PRICE

Defendants. :

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1 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY 2 -----X 3 STATE OF WISCONSIN, : CASE NO. 4 Plaintiff, : 04-CV-1709 5 v. : 6 AMGEN INC., et al., : 7 Defendants. : 8 -----X 9 10 IN THE COURT OF COMMON PLEAS 11 FIFTH JUDICIAL CIRCUIT 12 -----X 13 STATE OF SOUTH CAROLINA, and : STATE OF 14 HENRY D. McMASTER, in his official : SOUTH CAROLINA 15 capacity as Attorney General for : COUNTY OF 16 the State of South Carolina, : RICHLAND 17 Plaintiff, : 18 v. : CIVIL ACTION: 19 MYLAN LABORATORIES, INC. : 07-CP-40-0283 20 Defendant. : 21 -----X 22	1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS 2 STATE OF MISSOURI 3 -----X 4 STATE OF MISSOURI, ex rel., : 5 JEREMIAH W. (JAY) NIXON, : 6 Attorney General, : 7 and : 8 MISSOURI DEPARTMENT OF SOCIAL : 9 SERVICES, DIVISION OF MEDICAL : Case No.: 10 SERVICES, : 054-1216 11 Plaintiffs, : Division 12 : No. 31 13 vs. : 14 DEY INC., DEY, L.P., MERCK KGaA, : 15 EMD, INC., WARRICK : 16 PHARMACEUTICALS CORPORATION, : 17 SCHERING-PLOUGH CORPORATION, and : 18 SCHERING CORPORATION, : 19 Defendants. : 20 -----X 21 22
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1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT 2 IN AND FOR LEON COUNTY, FLORIDA 3 THE STATE OF FLORIDA 4 ex rel. 5 -----X 6 VEN-A-CARE OF THE FLORIDA : 7 KEYS, INC., a Florida : 8 Corporation, by and through its : 9 principal officers and directors, : 10 ZACHARY T. BENTLEY and : 11 T. MARK JONES, : 12 Plaintiffs, : 13 vs. : Civil Action 14 MYLAN LABORATORIES, INC.; MYLAN : No.: 98-3032G 15 PHARMACEUTICALS INC.; NOVOPHARM : Judge: 16 LTD., SCHEIN PHARMACEUTICAL, INC.; : William L. 17 TEVA PHARMACEUTICAL INDUSTRIES : Gary 18 LTD., TEVA PHARMACEUTICAL USA; : 19 and WATSON PHARMACEUTICALS, INC. : 20 Defendants. : 21 -----X 22	1 New York, New York 2 Friday, May 4, 2007 3 4 5 Videotaped Deposition of BRUCE C. 6 VLADECK, Ph.D., a witness herein, called for 7 examination by counsel for Abbott Laboratories in 8 the above-entitled matter, pursuant to Subpoena, 9 the witness being duly sworn by JOMANNA DEROSA, a 10 Notary Public in and for New York, taken at the 11 offices of Jones Day, 222 East 41st Street, New 12 York, New York, at 8:38 a.m. on Friday, May 4, 13 2007, and the proceedings being taken down by 14 Stenotype by JOMANNA DEROSA, and transcribed under 15 her direction. 16 17 18 19 20 21 22

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<p>1 needs to introduce themselves for the record?</p> <p>2 MR. RORTVEDT: This is Victor Rortvedt,</p> <p>3 for Endel.</p> <p>4 THE VIDEOGRAPHER: Anybody else?</p> <p>5 MS. BROOKER: Is there anyone else new</p> <p>6 on the phone call who hasn't introduced</p> <p>7 themselves?</p> <p>8 THE VIDEOGRAPHER: Okay. Will the</p> <p>9 reporter please swear in the witness.</p> <p>10 MS. BROOKER: Well, I'm sorry.</p> <p>11 THE VIDEOGRAPHER: Oh, keep going.</p> <p>12 MS. BROOKER: A couple of matters. I</p> <p>13 just wanted to -- to make this easy for everyone.</p> <p>14 Do you want to have an agreement that if there is</p> <p>15 an objection to form or any questions at the</p> <p>16 deposition --</p> <p>17 MR. COOK: One will do.</p> <p>18 MS. BROOKER: One will do. It's</p> <p>19 preserved with respect to all others.</p> <p>20 MR. COOK: That is my first two bullet</p> <p>21 points.</p> <p>22 MS. BROOKER: Okay. The second thing</p>	<p>1 sent a deposition notice and subpoena for -- for</p> <p>2 Dr. Vladeck, and he appeared and -- and not only</p> <p>3 appeared, we did not send a 30(b)(6) notice to</p> <p>4 him.</p> <p>5 MS. BROOKER: Okay. Thank you.</p> <p>6 MR. AZORSKY: And also, let me speak</p> <p>7 for the record that -- I'm speaking specifically</p> <p>8 now with relation to the Florida case.</p> <p>9 Insofar as this deposition is cross-</p> <p>10 noticed in the Florida case and no documents have</p> <p>11 been produced by the defendants in that case</p> <p>12 personally to properly serve the request for</p> <p>13 production of documents, the plaintiffs in that</p> <p>14 case object to the introduction and use of any</p> <p>15 exhibits at this deposition, and reserve the</p> <p>16 right to strike any testimony based upon such</p> <p>17 exhibits as may be used in this deposition.</p> <p>18 MR. COOK: And if I could ask the</p> <p>19 Department of Justice, if this deposition needs</p> <p>20 to be retaken because of objections that are</p> <p>21 being asserted by the plaintiffs, will the</p> <p>22 government assert objections to Mr. Vladeck</p>
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<p>1 is, do you also want to agree that if it's a form</p> <p>2 objection, it's sufficient to say "objection,</p> <p>3 form" to preserve the objection?</p> <p>4 MR. COOK: Yes.</p> <p>5 MS. BROOKER: Okay.</p> <p>6 MR. COOK: And I'll -- and I'll ask, if</p> <p>7 -- if -- if I have a question, to see whether</p> <p>8 it's curable.</p> <p>9 MS. BROOKER: Okay. One other thing I</p> <p>10 wanted to cover. I just wanted it to be very</p> <p>11 clear at the outset of the deposition, and to</p> <p>12 state on the record that Dr. Vladeck is here in</p> <p>13 his capacity as a former HCFA administrator.</p> <p>14 He's not here in his personal capacity. He is</p> <p>15 certainly not here on behalf of the agency as a</p> <p>16 corporate designee. He's not speaking on behalf</p> <p>17 of the agency, and he's not here as an expert</p> <p>18 witness to express his opinion.</p> <p>19 So, I -- I just wanted to state that at</p> <p>20 the outset.</p> <p>21 MR. COOK: Yes. I don't know what all</p> <p>22 the consequences of that are, but we certainly</p>	<p>1 testifying again?</p> <p>2 MS. BROOKER: We'll take it under</p> <p>3 consideration.</p> <p>4 MR. COOK: And so, there's a</p> <p>5 possibility that the plaintiffs' objection would</p> <p>6 result in Dr. Vladeck's testimony never being</p> <p>7 placed into the Florida case.</p> <p>8 MS. BROOKER: Well, I think we're</p> <p>9 premature on -- on this, but --</p> <p>10 MR. COOK: Okay.</p> <p>11 MS. BROOKER: -- we'll -- we'll --</p> <p>12 we'll consider that.</p> <p>13 Chris, did you have anything else</p> <p>14 before we start?</p> <p>15 MR. COOK: No.</p> <p>16 MS. BROOKER: I think we can swear the</p> <p>17 witness.</p> <p>18 THE VIDEOGRAPHER: Just -- just -- just</p> <p>19 a reminder to people on the conference phone, now</p> <p>20 that we finished introductions, please put your</p> <p>21 phones on mute.</p> <p>22</p>

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<p>1 A. No.</p> <p>2 Q. You'll notice that in 1989, one of your 3 predecessors, Acting Administrator Hays, referred 4 to average wholesale price as a sticker price, as 5 did Secretary Shalala in 1997, and President 6 Clinton again in 1997.</p> <p>7 While you were administrator of HCFA 8 between 1993 and 1997, did you understand average 9 wholesale price to be the sticker price for 10 drugs?</p> <p>11 MS. BROOKER: Objection. Form.</p> <p>12 A. That would have been one of the 13 metaphors or analogies we used to describe it, 14 yes.</p> <p>15 Q. Turning to Exhibit Abbott 156, the 16 radio address by President Clinton, is there any 17 aspect of President Clinton's statement that I've 18 read into the record with which you disagree?</p> <p>19 MR. BREEN: Objection. Form.</p> <p>20 MS. BROOKER: Objection. Form.</p> <p>21 A. The -- had I been engaged in the 22 process of preparing this speech or whatever, the</p>	<p>1 A. No. I would -- I would say that most 2 of my focus in that period of time was on brand 3 name drugs, that the issues we were most 4 concerned about, in terms of Medicare drug 5 payments and drug policies primarily involved 6 brand name drugs.</p> <p>7 And out of naivete, or for whatever 8 reason, I believe that the -- the market for 9 generic was more truly competitive in that 10 transaction prices in the market were probably 11 more constrained or limited than they were for -- 12 for brand name drugs.</p> <p>13 Q. How do you mean that the prices in the 14 marketplace would be constrained or limited for 15 generics?</p> <p>16 A. Just in the sense of classic economic 17 theory, in which a patent creates a monopoly 18 pricing power on the part of the patent holder 19 that essentially permits substantially greater 20 latitude or discretion in setting the price. 21 Whereas a product that has identical competitors 22 in the market, producers, would have less freedom</p>
<p>1 sentence on the -- that concludes the paragraph 2 carrying over on to Page 2, "in fact, some pay 3 just one-tenth of the published price," I would 4 have raised concerns about because I would not 5 have been aware, at the time, of any gap between 6 actual acquisition cost and AWP and the compendia 7 of -- of that magnitude.</p> <p>8 Q. So, it's your recollection that as of 9 December 1997, you personally were not aware of a 10 gap of one to ten between provider acquisition 11 cost and published average wholesale price?</p> <p>12 A. That's correct. My understanding at 13 the time was that there was not a constant, but a 14 pretty systematic spread of the kind one might 15 find in the apparel or automobile industries 16 between sticker or list price and the price to 17 the -- the final seller.</p> <p>18 Q. And when you described your 19 understanding of the difference between 20 acquisition cost and published average wholesale 21 prices, did you distinguish, in your mind, in 22 1997, between brand name drugs and generic drugs?</p>	<p>1 to unilaterally change their price or certainly 2 to unilaterally raise their prices.</p> <p>3 Q. So, let's step back and address first 4 brand name drugs, and then -- and then generic 5 drugs.</p> <p>6 What was your understanding, in 1997, 7 of the relationship between published average 8 wholesale price and prices within the marketplace 9 for brand name drugs?</p> <p>10 MS. BROOKER: Objection. Form.</p> <p>11 A. My understanding, which I think is 12 consistent with, for example, the Secretary's 13 response in the exhibit we just discussed a few 14 minutes ago, is that average wholesale price was 15 an -- almost literally, a list price. That is to 16 say, a price prepared for public consumption and 17 public dissemination by the manufacturers, and 18 that their general industry practice meant that 19 the manufacturers actually provided that product 20 to the pharmacist or physicians, whoever was 21 selling it, at some discount, which we estimated 22 averaged between 15 and 20 percent.</p>

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<p style="text-align: right;">Page 154</p> <p>1 MS. BROOKER: Objection. Form.      2 MR. COOK: That's a bad question. I can      3 ask a better question.      4 Q. What did you mean when you said that      5 you understood that there was, on average, a      6 percentage difference between AWP and the price      7 to providers?      8 A. Again, I would have been very much      9 influenced by my perception of the relationship      10 of sticker price to transaction prices in other      11 sectors or other industries. And, again, it was      12 my belief that, on average, the actual      13 acquisition price for brand drugs was somewhere      14 in the range of 15 percent below average      15 wholesale price, as we understood it, but that,      16 again, the buyers or the providers with the least      17 market power were probably paying amounts closest      18 to the average wholesale price, and that the most      19 powerful purchasers might well be paying less      20 than 85 percent or so of the -- of the average      21 wholesale price.      22 Q. And so, your understanding, do I have</p>	<p style="text-align: right;">Page 156</p> <p>1 MS. BROOKER: Objection. Form.      2 A. Absolutely.      3 Q. And so, it would certainly be possible      4 that for one drug there would be a different      5 variation in a different range of market prices      6 than for another drug.      7 Right?      8 MR. BREEN: Objection. Form.      9 A. Again, to the extent I was -- you know,      10 I was thinking about these issues in this detail,      11 I would say that at the time, my perception was      12 there was a pretty standard relationship between      13 AWP and average prices in the market. I could      14 have -- had you posed that question then, I      15 probably could have envisioned particular drugs      16 that might have been different, but that was not      17 how I understood the issue at the time, I don't      18 believe.      19 Q. And, again, we're talking about brand      20 name drugs. Correct?      21 A. That's correct.      22 MR. COOK: I'd like to show you a</p>
<p style="text-align: right;">Page 155</p> <p>1 it correct, is that for a single drug, there      2 would be variation among providers in their      3 acquisition cost. Correct?      4 MS. BROOKER: Objection. Form.      5 A. That is correct.      6 Q. Was it your understanding also that for      7 different drugs, the variations between      8 acquisition cost and AWP wouldn't necessarily be      9 the same?      10 MS. BROOKER: Objection. Form.      11 A. I think my perception was -- and,      12 again, to the extent I spent a lot of time      13 thinking about it or whatever, that the -- the      14 differential between average market price or      15 average acquisition price on the one hand and      16 average wholesale price on the other was probably      17 pretty standard, pretty constant, pretty uniform      18 across drugs would have been my understanding at      19 the time.      20 Q. But you would agree with me that      21 different drugs might have different markets and      22 different purchasers?</p>	<p style="text-align: right;">Page 157</p> <p>1 couple of OIG reports that may be among the ones      2 you've seen already.      3 The first comes from 1992, just before      4 you were administrator of -- of HCFA. It's been      5 marked in the past as Exhibit Abbott 082.      6 And for the record, this is a report,      7 with an accompanying cover memo, dated October      8 20, 1992. It's from Bryan B. Mitchell, Principal      9 Deputy Inspector General to William Toby, Jr.,      10 who was the acting administrator of HCFA.      11 Do I recall correctly that William Toby      12 immediately preceded you as the acting      13 administrator of HCFA?      14 A. That is correct.      15 Q. The subject, as described on the cover      16 page, the third page of the exhibit you have, is      17 "Cost of Dialysis Related Drugs" and indicates a      18 date of October 1992.      19 Do you recall ever seeing this report      20 before, Dr. Vladeck?      21 A. I don't believe I have.      22 Q. This would have been before your time.</p>